

## SUMMARY OF TECHNICAL ISSUES

*Prepared by  
Banking Working Group*

**Table 1: Issues under SBV's jurisdiction**

**Category 1.** Matters for which agreement on how to understand and address them at a technical level between SBV agencies and BWG is absent – No pending issues

**Category 2.** Matters that SBV has acknowledged and will soon have a plan to deal with in the near future

**Category 3.** Matters of a mutual cooperation nature, and matters that SBV has acknowledged and will consider and follow-up when revising its Circulars and Decrees

**Category 4.** Matters relating to other ministries' jurisdiction

No.	MATTER OF INTEREST	ISSUES	CONCLUSIONS & RECOMMENDATIONS
<b>CATEGORY 2</b>			
1	Circular 19/2016/TT-NHNN on bank card operations	Partnership with card interchange institutions  Article 24.2 - BWG members have faced practical challenges and implementing complexities (in relation to delegation of authority in offshore banking systems, timeframe constraints: more time is needed to agree on various items and answer questions on the draft Techspecs & Codes of Conduct, 18-24 months for testing to ensure reliable connection.  - BWG suggests that SBV considers not to put this Article 24 in effect starting from Jan. 1, 2019, and expects to receive detailed updates on the interchange roadmap and plan from NAPAS.	<b>Further actions required</b> Banks and NAPAS will continue to proactively and closely expedite implementation, collaborate with BWG, update and report progress to SBV.
2	Decree 70 on privacy, storage and disclosure of information relating to customers' deposits and accounts, and draft Decree that will replace Decree 70		<b>SBV has been well noted and will continue dealing with this issue.</b>
3	Circular 19/2014/TT-NHNN	Revising implementing Circulars for foreign exchange control in direct investment and portfolio investment to be consistent with current rules on	<b>SBV is drafting the revised Circular 19/2014, which is expected to come out later in 2018.</b>

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		<p>foreign investment.</p> <p>One of the challenges most reported by foreign-invested companies is the Investment certificate being used as the only reference to identify a directly investing business for foreign investment capital account opening purposes, while in many cases, this does not reflect correctly the nature of the investment activity and existing regulations on investment activities (Investment Law of Nov. 26, 2014, Decree 118/2015/ND-CP, providing details and implementing guidance for specific clauses of the Investment Law). Furthermore, given the development of derivative markets in Vietnam, Circular 05/2014/TT-NHNN can be revised to cover specifically derivative securities and include relevant reporting indicators for investment in these securities by foreign investors.</p>	
4	Circular 15/2015/TT-NHNN	<p>08 matters:</p> <p>1. Transaction confirmation: (Articles 9.1 and 9.2).            BWG seeks Monetary Policy Department (MPD) confirmation on BWG's interpretation and implementation for foreign exchange transactions (e.g. wire transfers), where the customer does not agree with the bank on the exchange rate, but instead allows the bank discretion in choosing the exchange rate. In this case, a combination of the following three documents will provide the full information necessary to confirm an FX transaction according to Article 9.2, Circular 15:</p> <p>(i) Customer's letter of authorization allowing the bank to use a reasonable exchange rate at the latter's discretion (specified in a general provision on the services and accounts that the customer committed with the bank when establishing the relationship and opening accounts);            (ii) Customer's bank transfer request that involves the foreign exchange activity; and            (iii) The bank's debit/credit statement (with the applied exchange rate clearly noted).</p> <p>Accordingly, there is no need to add another discrete confirming document</p>	<p><b>SBV has acknowledged all the 08 issues raised by BWG and will keep working on solutions.</b></p>

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		<p>for FX transactions, which will add a more paperwork burden and delay the execution of the customer's request, while helping nothing to contain risks for the customer, because the customer has authorized the bank to choose an exchange rate at its discretion.</p> <ol style="list-style-type: none"> <li>2. Timeline for submission of transaction confirmation: (Article 9.3)</li> <li>3. Maturity date for forward transactions (Article 13.2)</li> <li>4. Transactional supporting documents – Article 12.2:</li> <li>5. Extension/Adjustment of forward transaction maturity: Article 12.2</li> <li>6. Settlement date in spot transactions: Article 13. Selling foreign currencies for undue transactions</li> <li>7. Payment option flexibility</li> </ol> <p>Using a swap to revise a previously executed forward (advanced delivery/extension of a forward contract).</p>	
<b>CATEGORY 3</b>			
1	Codes of Conduct in banking business	In line with global trends and the Governor's instructions in Directive 07/2017/CT-NHNN, regarding increasing compliance and ethics for bank officers and employees, BWG wants to work closely with SBV in setting rules on ethics in the banking sector to help develop a sustainable, secure and effective banking system.	<b>Further actions required</b> BWG will be working with SBV and VNBA in implementation.
2	Circular 26/2017/TT-NHNN revising Circular 19/2016/TT-NHNN, on bank card operations	<p>Defining the length of resident stay for non-nationals in Vietnam</p> <p>Reference provisions: Articles 1.3 and 1.7, Circular 26; Article 1.3, revising Articles 10.2 and 10.5; Article 1.7, Circular 26: revising paragraphs 1.b, 2, and 3.c, and adding a paragraph 4 to Article 16</p> <p>When a bank issues cards for the first time, or issues more bank cards, or replace a customer's card when the existing card expires, to know whether a non-national may stay in Vietnam for 12 months or longer as required in Circular 26, the bank may refer to the following credentials:</p> <p>(i) Visa, temporary stay certificate or resident card with an accumulated length of stay of 12 months or longer; For example, a customer has a visa spanning Jan. 1, 2018 and Jan. 1, 2019, asks for a card issued on May 1, 2018. The 12-month visa length above meets the requirement of Circular 26;</p>	<b>SBV has been well noted and will continue dealing with this issue.</b>

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		<p>or</p> <p>(ii) Visa, temporary stay certificate, resident card with a length of stay of less than 12 months; the customer may additionally submit a labor contract, recruitment approval or other credentials with a validity period of 12 months or longer to prove that they are allowed to stay in Vietnam for 12 months or longer as required in Circular 26.</p> <p>(iii) To mitigate risks and safeguard regulators' governance purposes, BWG recommends adding to "General terms and conditions" in the agreement between the bank and customer a clause stating that when the customer fails to present a new visa in case of visa expiry, the bank may deactivate the card.</p>	
3	Circular 21/2017/TT-NHNN on how to loan proceeds are released from a bank to a borrower	<p>Article 7.3:</p> <ul style="list-style-type: none"> <li>- Guidance on accounting treatment through a dedicated capital account when executing multiple foreign currency buy transactions from proceeds of a loan: an account opened for a customer or the bank's internal account.</li> <li>- Challenges and concerns when opening and managing more dedicated capital accounts used for this purpose; challenges in changing the core banking system adopting IFRS and cross-referencing data to meet the requirements. This requirement may result in a heavier workload and potential major risks for internal fraud.</li> </ul>	<b>BWG will discuss this internally and continue working with relevant SBV departments if needed.</b>
4	<p>Circular 39/2016/TT-NHNN, on lending by credit institutions and foreign bank branches to borrowers</p> <p>Circular 19/2016-TT-NHNN on bank card operations</p>	Article 1, Circular 39, and Article 1, Circular 19 – Not applicable to credit card-based credit extension	<p><b>Further actions required</b></p> <p>BWG had a meeting with the Payment Department, where it summarized and presented all concerns relating to Circulars 19 and 39, including bank cards and credit card-based lending.</p>
5	Circular 39/2016/TT-NHNN	<p>Article 8.6:</p> <p>As we understand it, the requirements for existing loans that have not been rescheduled only apply to domestic loans and not foreign loans. Under</p>	<b>Solved.</b>

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		<p>Article 2.10, the definition of debt rescheduling also refers to a credit institution (commercial bank or Vietnam-based foreign bank branches) accepting to modify repayment due dates or allow extension of loan maturity.</p> <p>For new loans, a commercial bank only needs to make sure that the new loan has the same maturity as the existing one, and the repayment amount per installment may change.</p>	
6	Circular 39/2016/TT-NHNN	Commitment fee collection	<b>Solved.</b>
7	Recommended review of the regulation on providing implementing guidance for identifying beneficial owners in Decree 116	<p>Given the current challenges with public domain information and difficult verification, time and effort constraints in asking the customer to provide required information, limitations of independent information sources, and the different definitions of the criteria used to identify beneficiaries in Vietnam and international common practices,</p> <p>Banks are facing a tough situation in how to verify that an individual holds 10% or more charter capital in a legal entity; individuals holding 20% or more charter capital in entities having more than 10% equity in the legal entity; private business owners; and other individuals who actually control the entity, under regulations on identifying beneficial owners referred to in Article 5.1, Decree 116/2013/ NĐ-CP.</p> <p>BWG suggests that SBV allows:</p> <p>8.1. Only identifying the ultimate beneficial owner (UBO) holding (directly and indirectly) 25% or more of the charter capital (as indicated in <b>Table 1, attached Appendix 1</b>).</p> <p>8.2. There is no need to identify ultimate beneficial owners in case the customer is rated as low-risk by financial institutions incorporated in FATF member nations, since these institutions have advanced anti-money laundering and financing terrorism control systems, and are monitored by relevant host country regulators.</p>	<b>SBV has been well noted and will continue dealing with this issue.</b>

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		8.3. There is no need to identify ultimate beneficial owners (UBOs) that are publicly listed entities (defined based on public lists of securities exchanges that may apply internal policies of foreign banks or foreign bank branches).	
8	Circular 19/2017/TT-NHNN, revising Circular 36/2014/TT-NHNN, providing on limits and prudential ratios in the operation of credit institutions and foreign bank branches	<p>Paragraph 21, Appendix 2:</p> <p>Given the fact that banks and financial institutions in Vietnam still have limited capabilities in enlarging capital and there is a vital need for interbank transactions at low interest rates, keeping a Risk ratio of 20% is reasonable and necessary.</p> <p>We recommend that SBV considers retaining the Risk ratio for receivables from other Vietnam-based credit institutions and foreign bank branches at the current 20% rate.</p>	<b>SBV has been well noted and will continue dealing with this issue.</b>
9	Decree 22/2006/ND-CP, which will expire from July 1, 2018 under Decree 42/2018/ND-CP.	<p>Decree 22, Article 18. Transaction language AND Circular 40/2011/TT-NHNN – Article 20. Transaction language</p> <p>According to Article 18, Decree 22, transactional documents with Vietnamese individuals or entities must be made in the Vietnamese language or both Vietnamese and a commonly used foreign language. As such, transactional documents with foreign individuals or entities must not be made in Vietnamese.</p> <p>However, when Decree 22 expires on July 1, 2018, this rule on the transaction language will be subject to Article 20, Circular 40, where, regardless of the customer being a Vietnamese or foreign party, all formal transactional documents must use Vietnamese or concurrently Vietnamese and a commonly used foreign language. This rule seems out of touch with what is really going on in real life with foreign individuals and entities, since they do not understand Vietnamese, thus requiring the use of Vietnamese in contracts or documents will add a burden for non-national customers in considering, negotiating, executing contracts and transactions with a bank.</p>	<b>SBV has been well noted and will continue dealing with this issue.</b>
10	Circular 19/2017/TT-	Circular 19/2017/TT-NHNN	<b>SBV has been well noted and will continue</b>

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	NHNN And Circular 22/2017/TT-NHNN, revising credit institutions' chart of accounts	Regulations on exchange rates when converting positions with an FX origin to calculate prudential ratios  Circular 22/2017/TT-NHNN Article 1.8.6	<b>dealing with this issue.</b>
11	Circular 19/2014/TT-NHNN	Capital transfer in foreign direct investment (FDI) companies  Feedbacks from many customers of BWG members and law firms counseling customers and banks (including Vietnamese credit institutions and foreign bank branches), there are different interpretations and applications of payment currencies, applied accounts and payment cash flow in capital transfer transactions in FDI businesses. This makes it difficult for the customers in negotiating capital transfer agreements and conducting payment transactions in the transfer, and in a wide variety of circumstances, completing a transfer transaction takes a long time and results in unnecessary costs for the parties to the transfer.	<b>SBV is duly noted and will continue dealing with this issue.</b>
12	Circular 23/32 – opening accounts through SWIFT		<b>SBV is duly noted and will continue dealing with this issue.</b>

Table 2. Matters under other ministries' jurisdiction

No.	MATTER OF INTEREST	RECOMMENDATION	CONCLUSIONS & RECOMMENDATIONS
<b>CATEGORY 4</b>			
1	Circular 23/32 on opening and using accounts; Circular 46/2014/TT-NHNN, on non-cash payment; Accounting Law; Decision 1789 on bank accounting documentation regime	<p>According to Circular 23/32 on opening and using accounts, Circular 46/2014/TT-NHNN on non-cash payment, and Accounting Law, an institutional customer's payment/transfer request must be approved by (i) the account holder/account holder's proxy; and (ii) the Chief Accountant/Chief Accountant's proxy ("double approval"), regardless of the request being made in paper form or through electronic channels.</p> <p>With this double approval requirement, BWG is facing various challenges with Host-to-Host and E-Portal transactions, to be more specific:</p> <ul style="list-style-type: none"> <li>- In solutions that connect directly a company's accounting system and a bank's online system (Host-to-Host) that the bank offers the customer, the client company only needs to approve payments internally, and the payment request will be sent directly to the bank's system without the need for any request approval on the bank's e-banking system. In this process, double approval is unavailable and the bank cannot verify the approver before the request reaches the bank.</li> <li>- Connecting a payment portal with tax and customs authorities (E-Portal): in this solution, the customer may access a portal of a tax authority and then send a tax payment request to the bank's request handling system. The challenges that banks are facing: (i) in authenticating the approver on the tax authority's portal; and (ii) the inability to apply double approval, since only one user inputs and approves the request from the tax authority's portal.</li> </ul>	BWG has been working with the Ministry of Finance on the Accounting Law and accounting documents.
2	Circular 23/32, on opening and using accounts, and Circular 02, revising Circular 32	- BWG held dialogues with SBV, Ministry of Planning and Investment and Ministry of Justice. The group, however, still faces practical challenges and looks forward to discussing with SBV on solution for account opening and use for those specified in Article 4.2, Circular 32.	BWG has been working with the Ministry of Justice on the Civil Code, since Circular 32 reflects on the Civil Code.
3	. Circular 46/2014/TT-NHNN, guiding on	Amount in words on a payment order Article 8.1. Payment services based on payment orders	BWG has been working with the Ministry of Finance on the Accounting Law and accounting



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	non-cash payment services; Decision 1789 on bank accounting documentation regime	<p>Decision 1789 on bank accounting documentation regime.</p> <p>In e-payment such as transactions on the CITAD system, (i) it is required that the payment order must show amounts in words; and (ii) checks must be made to ensure that the amount in words matches that in numbers, and some other provisions in Article 8 may compromise the benefits of e-payment, while being unable to better control risks as with a paper-based order.</p> <p>In international common practices and the e-payment systems of most banks in Vietnam, as well as the CITAD system, the e-payment order form has no field for amount in words. Updating the system to meet this requirement, however, is a daunting task for both banks and users.</p>	documents.
4	Circular 39/2016/TT-NHNN	<p>Repayment hierarchy for principal and interest</p> <p>Articles 18.4 and 20</p> <p>Article 18.4, Circular 39, establishes that for overdue loans of personal customers, financial institutions must collect the principal first and interest later. complying with this Article 18.4, banks are facing these challenges: By collecting overdue principal first, the borrower may choose to pay only the overdue principal amount, without paying the interest. As this overdue interest amount is not turned into overdue debt under Article 20, Circular 39, the borrower's credit track record will not be tainted (no bad debt). For name lending, this means that it will be very difficult for the bank to collect the interest and may not be able to collect it at all.</p>	BWG has been working with the Ministry of Justice on the Civil Code, since Circular 39 reflects on the Civil Code.
5	ISDA-based netting (derivatives)	<p>BWG is facing several challenges pertaining to ISDA-based netting. To be more specific:</p> <ul style="list-style-type: none"> <li>- Banks are applying Basel 2 and Basel 3, and a coupon fee applies to derivatives. In the set pathway, Vietnam will stick to Basel 2 by the end of 2020.</li> <li>- This coupon fee in the case of unrecognized netting jurisdictions is very substantial, and currently China and Indonesia have had roadmaps in place</li> </ul>	BWG has been working with the Ministry of Justice to help with the amendment of the Bankruptcy Law, and SBV is giving its full cooperation.

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		to use netting to cut coupon costs and drive derivatives market development. - BWG has been working on this with ISDA. The working groups suggests that SBV forms a task force and holds consultations/meetings with BWG, ISDA, SBV, ADB and relevant ministries (Ministry of Justice on the Bankruptcy Law).	
6	Simplifying verification of supporting documents in FX transactions	BWG has completed standard checklists and guides for verifying FX transactions as provided in the attached Appendix 3. We hereby submit them to SBV and hope to hear SBV's comments.	SBV has acknowledged BWG's recommendations and confirmed that current FX regulations do not include specific rules on the degree of supporting documents verification. BWG has been working with MOJ and Courts to clarify the responsibilities of the bank and related parties.
7	Cash management products		It is unknown which ministry or agency is in charge of this matter. BWG will keep working with MPI, Ministry of Finance, Ministry of Justice and SBV to identify relevant jurisdictions.